

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

G. DANIEL WALKER,

Plaintiff and Appellant,

v.

STUART J. RYAN et al.,

Defendants and Respondents.

D048270

(Super. Ct. No. ECU02281)

APPEAL from a judgment of the Superior Court of Imperial County, Joseph W. Zimmerman, Judge. Affirmed.

G. Daniel Walker, a prison inmate, appeals the dismissal of a pro se civil action he filed against the California Department of Corrections, several prison guards and others (collectively, the defendants). He contends the trial court abused its discretion when it dismissed his action without prejudice for failing to timely serve the defendants. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 3, 2005, Walker filed this action and a few days later the trial court partially granted his application for a waiver of court fees and costs, specifying that he was required to make monthly payments for all fees in the amount of 20 percent of any monthly income credited to his inmate trust account. (Although Walker requested that his application for a waiver of court fees and costs be included in the record on appeal, this document was not included. We supplement the record on appeal by taking judicial notice of this application. (Evid. Code, § 452, subd. (d).) In June 2005, the trial court issued an order to show cause (OSC) regarding Walker's failure to timely serve the defendants. The trial court vacated the OSC and set a case management conference (CMC), finding that "a conformed copy of the complaint was done and delivered."

Walker filed a CMC statement, indicating that he mailed the court clerk a summons and asked for a certified copy of the fee waiver order to enable the Imperial County Sheriff's office to serve the defendants. After the trial court continued the CMC, Walker filed another CMC statement indicating that the clerk issued a single original summons, but refused to endorse the service copies of the summons. Walker claimed he could not make copies of the summons for submission to the Imperial County Sheriff's office because the prison was in emergency lockdown. He asked for an order allowing service without the summons or for defendants to make copies of it; alternatively, he enclosed summonses for the court clerk to endorse and return to him.

When Walker did not appear at the CMC, the trial court scheduled an OSC regarding why the case should not be dismissed. Walker reminded the court that he was a

prisoner and needed a removal order to appear and asked that all future hearings be held at the prison. At the OSC hearing, the trial court set another OSC because the defendants had not yet been served and warned Walker that the action would be dismissed if he failed to serve them. Walker informed the court that the prison was in lockdown, he was unable to get copies made, and the court had failed to issue an order directing the sheriff to serve the complaint and summons. The trial court stated it could not order the sheriff to effect service and continued the OSC hearing for 45 days to allow Walker to attempt service. After Walker again asked for a court order directing the sheriff to serve the defendants, the trial court dismissed the case without prejudice in March 2006. Walker appeals.

DISCUSSION

A trial court's decision to dismiss an action is presumed correct and the party challenging it bears the burden of establishing an abuse of discretion. (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.) An abuse of discretion occurs only if the trial court's decision exceeds the bounds of reason. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Under the California Rules of Court and the Imperial County Superior Court Local Rules, a complaint must be served on all named defendants within 60 days after the filing of a complaint. (Cal. Rules of Court, rule 201.7(b); Super. Ct. Imperial County, Local Rules, rule 3.05.) A party, however, may file an ex parte application seeking a court order extending the time to serve with an accompanying declaration showing what efforts were made to effect service and why service had not been completed. (Cal. Rules of Court, rule 201.7(e); Super. Ct. Imperial County, Local Rules, rule 3.05.) A declaration

is a writing that is signed, dated, certified as true under penalty of perjury, and must either reveal a place of execution within California, or recite that it is made "under the laws of the State of California." (Code Civ. Proc., § 2015.5.)

The Trial Court Delay Reduction Act gives a trial court the power to dismiss cases when plaintiffs do not comply with "fast-track" rules (Gov. Code, § 68608, subd. (b); see also Code Civ. Proc., § 575.2, subd (a) [authorizing dismissal of an action for noncompliance with local rules]) and the sole question presented in this appeal is whether the trial court abused its discretion in dismissing Walker's action based on his failure to serve the defendants. The record here shows no such abuse.

In late August 2005, Walker prepared to have the Imperial County Sheriff's office serve the defendants by mailing a summons listing all of the defendants to the court clerk and asking the court clerk to issue the summons. In November 2005, Walker indicated that he had received a single original summons, but was not able to get the summons copied because the prison was in lockdown. In his January 2006 communication to the court, Walker repeated his assertion that the prison was in lockdown, but never explained what efforts he undertook to obtain copies of the summons for service on the defendants. Rather, he chastised the trial court for not directing the Imperial County Sheriff's office to serve the summons and complaint. After the trial court explained that it could not order the sheriff to serve the defendants, Walker again asserted that the trial court could order the sheriff to effect service of process on the defendants; however, the authority he cited was inapposite.

Government Code section 68511.3, subdivision (e) requires prison inmates to pay the full amount of filing fees and provides a mechanism that calibrates the fees to be paid on the inmate's financial ability as set forth in the inmate's statement of account. This statute does not address service of process. Walker also asserts that the Judicial Council of California order form on applications for the waiver of fees and costs recognizes a trial court's authority to order the sheriff to effect service of process on defendants, but this order form only recognizes the trial court's authority to waive the payment of any sheriff or marshal fees. The tenor of Walker's filings below appear to suggest that because the prison was locked down, the trial court was responsible for making copies of the summons and complaint and arranging service on the defendants. He is mistaken.

Inmates are statutorily entitled to access to the courts (Pen. Code, § 2601, subd. (e)), such access cannot be obstructed (Cal. Code Regs., tit. 15, § 3160, subd. (a)), and any restrictions on inmate duplicating services cannot interfere with the inmate's access to the courts. (*Id.* at § 3162.) The lockdown status of a prison does not abrogate these rights; rather, a "lockdown" situation suspends required programs or services and inmates are not released except as determined by the facility on a "case-by-case basis." (*Id.* at § 3000.) Here, Walker did not provide any information showing what efforts he made, if any, to obtain copies of the summons. Nor did he ever seek a court order extending the time to serve the defendants with an accompanying declaration showing his efforts. (Cal. Rules of Court, rule 201.7(e).) On this record, we cannot conclude that the trial court abused its discretion when it dismissed the complaint without prejudice.

For the first time on appeal, Walker contends that the Imperial County Sheriff's office will not serve inmate generated lawsuits without a signed court order; however, there is nothing in the record showing that the sheriff refused to serve the summons and complaint. Walker also questions whether the Imperial County Superior Court has an unwritten policy preventing prisoner generated lawsuits from being heard on their merits, but this issue is beyond the scope of the appeal and we express no opinion on it.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.